

**THE STATE OF NEW HAMPSHIRE**  
**SUPREME COURT**

**In Case No. 2004-0332, Parade Offices, LLC v. Makrie, LLC,  
the court on March 15, 2005, issued the following order:**

Parade Offices, LLC (Parade) sought a declaratory judgment that Makrie, LLC (Makrie) has no legal or equitable interest in Parade's property. The superior court granted summary judgment to Parade. We affirm.

In reviewing a grant of summary judgment, we look at the affidavits and other evidence, and all inferences properly drawn therefrom, in the light most favorable to the non-moving party. If our review of that evidence discloses no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, we will affirm the grant of summary judgment. As no material fact is in dispute on appeal, we need only determine whether the defendant was entitled to judgment as a matter of law. Our review of the trial court's application of the law to the facts is de novo.

Del Norte, Inc. v. Provencher, 142 N.H. 535, 537 (1997) (quotations, citations and brackets omitted).

At issue is property in Portsmouth. In 1977, a portion of the property, known as "the Hill," was submitted to condominium. The remaining portion of the property is known as "the Parade Mall," which is currently owned by Parade. Later in 1977, a parking easement was granted for the benefit of the owners of the Hill on the Parade Mall property.

In 2000, Makrie acquired the Hill by deed that included the easement. Makrie entered into a lease with The Hill of Portsmouth Condominium Association (by Makrie as declarant) in connection with the parking spaces. Thereafter, Makrie resubmitted the Hill to condominium under a restated and amended condominium declaration, which did not include the parking easement. Makrie later sold all of the condominium units.

The superior court correctly ruled that the parking easement was an appurtenant easement, the Hill being the dominant estate.

An appurtenant easement is an incorporeal right generally created for the purpose of benefiting the owner of the dominant estate and that runs with the land, is incapable of existence separate and apart from the dominant

tenement, and is inheritable. It is well settled that a dominant tenement's interest in an easement cannot be severed from the land by transferring it to a third party.

Cricklewood on the Bellamy Condo. Assoc. v. Cricklewood on the Bellamy Trust, 147 N.H. 733, 737 (2002) (quotation, citations, brackets and ellipsis omitted). We conclude that, similarly, a dominant tenement's interest in an easement cannot be severed from the land by transferring the land while attempting to retain the easement. Cf. Arcidi v. Town of Rye, 150 N.H. 694, 698 (2004) (appurtenant easement is incapable of existence separate and apart from the dominant estate).

We need not decide whether the parking easement was extinguished. Indeed, as noted in its amicus brief, the current unit owners' association, which is not a party to this case, claims an interest in the parking easement. We agree with the superior court, however, that because Makrie no longer owns the dominant estate, it has no legal or equitable interest in Parade's property. Thus, the superior court properly granted Parade's motion for summary judgment.

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox,  
Clerk**